

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Corban Telecommunications Inc.'s Application
to Discontinue Domestic Telecommunications
Services

Comp. Pol. File No. 603

ORDER

Adopted: September 27, 2002

Released: September 27, 2002

By the Wireline Competition Bureau:

1. In this Order, we grant in part, and deny in part Corban Telecommunications, Inc.'s (Corban) application to discontinue the provision of select interstate microwave transmission services to about 200 common carrier and institutional customers in Alabama, Arkansas, California, Colorado, Georgia, Iowa, Idaho, Illinois, Indiana, Kentucky, Missouri, Montana, Nebraska, Nevada, New York, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Washington, and Wyoming, pursuant to section 214(a) of the Communications Act of 1934, as amended,¹ and section 63.71 of the Federal Communications Commission's (FCC or Commission) rules.² As explained in further detail below, authority to discontinue is denied in part in order to allow the Bureau further time to develop the record regarding the concerns of customers that have filed objections to Corban's application on the grounds that they will be unable to acquire a reasonable substitute service by Corban's requested discontinuance date of October 19, 2002.

BACKGROUND

2. On, August 22, 2002 Corban filed an application (Application) with the Commission requesting authority under section 214(a) of the Act and section 63.71 of the Commission's rules to discontinue the provision of select interstate microwave transmission services as of October 19, 2002. In its application, Corban included a copy of the letter notifying its customers of Corban's intent to discontinue service as of October 19, 2002.

¹ 47 U.S.C. § 214(a).

² 47 C.F.R. § 63.71.

3. Corban's Application states that its microwave transmitters are located on about 350 towers in the states Corban serves.³ About 280 of these towers are owned by Pinnacle Towers, which is currently in bankruptcy proceedings in the Southern District of New York. According to Corban, its pending discontinuance application grows out of a longstanding dispute between it and Pinnacle. Corban asserts that it has been unable to successfully negotiate a resolution of its dispute with Pinnacle and has been unable to obtain an economic alternative to Pinnacle's towers. Accordingly, Corban maintains that it has no choice than to terminate microwave service to all customers that are being provided service through equipment on a Pinnacle tower.

4. By Public Notice dated August 29, 2002, the Commission notified the public that, in accordance with 47 C.F.R. § 63.71(c), the application would be deemed to be automatically granted on the thirty-first (31st) day after the release date of this notice, unless the Commission notified Applicants that the grant would not be automatically effective.⁴ According to the normal operation of our rules, the automatic grant date for this application would be September 29, 2002.

5. Numerous broadcast licensees, broadcasters' associations, municipalities, and community groups in Montana and Wyoming filed comments opposing Corban's application, claiming that there is currently no other alternative to the retransmission service supplied by Corban.⁵ Without the retransmission of the broadcasters' signals, large segments of the public in portions of those states would be unable to receive crucial local programming and public safety services (such as weather, school closings, and emergency broadcasting). There are similar comments relevant to service provided in northern California and southern Oregon.⁶ In addition, Verizon Wireless filed comments stating that without Corban's service, its customers would lose service in many parts of Montana, Wyoming and South Dakota.⁷ MCI WorldCom Network Services (WorldCom) objects to discontinuation of select microwave transmission services it uses to provide service to the Federal Aviation Administration (FAA), specifically those services and circuits provided between Rapid City, South Dakota and Denver, Colorado and between Sergeant Bluff, Iowa and Denver.⁸ Commenters argue that they need additional time to obtain

³ Application at 1.

⁴ *Comments Invited on Corban Communications Inc. Application to Discontinue Domestic Telecommunications Services*, Public Notice, NSD File No. W-P-D-572, DA 02-650 (rel. March 18, 2002).

⁵ Comments were filed by the Montana Broadcasters Association; the Jackson Hole Chamber of Commerce; the Jackson Hole Historical Society and Museum; the Community Foundation of Jackson Hole; the Town of Jackson Hole; Rothgerber, Johnson & Lyons LLP; St Johns Hospital; the Teton County Sheriff's Office; the Teton County Commission; Glendive Broadcasting Corporation; Montana State University; Sunbelt Communications and its subsidiary companies Oregon Trail Broadcasting and Two Oceans Broadcasting; KTVQ Communications, Inc.; and Senator Craig Thomas, Senator Mike Enzi, and Congresswoman Barbara Cubin.

⁶ See Comments of Pacific Microwave Joint Venture at 1-3, Millennium Digital Media.

⁷ See Verizon Comments 2-5.

⁸ Letter from Lynn Darrow Carson, Associate Counsel, WorldCom, to Ms. Marlene Dortch, Secretary, FCC (Sept. 26, 2002).

substitute service,⁹ in some cases because of severe winter weather conditions that will make it impossible to put replacement services in place until next spring.¹⁰ Corban did not file a reply.¹¹

DISCUSSION

6. Section 214(a) of the Communications Act, as amended, states that “[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby.”¹² The primary purpose of this requirement is to reduce the harm to consumers caused by discontinuances of service, which is an important aspect of the Commission’s general obligation under the Communications Act to protect and promote the public interest.¹³ As the Commission has stated, “we have retained the right to delay grant of a discontinuance authorization if we believe an unreasonable degree of customer hardship would result,”¹⁴ and will review each application to determine whether proper notice has been given, whether customers or other end users are able to receive service or a reasonable substitute from another carrier, and whether the public convenience and necessity is otherwise adversely affected.¹⁵

7. The commenters in this proceeding have made a convincing showing that the public convenience and necessity would be adversely affected if Corban were to discontinue its microwave transmission services to the commenting parties on October 19, 2002. Accordingly, we deny Corban’s application as it applies to those commenters. The proposed discontinuance would disrupt the essential services that the commenting broadcasters and Verizon Wireless supply to communities in five states. The loss of weather and emergency broadcast functions alone presents significant public safety concerns. Combined with loss of wireless service, the

⁹ See, e.g., Comments of the Montana Broadcasters Association at 3; KTVQ Communications, Inc.; and Glendive Broadcasting Corporation.

¹⁰ See, e.g., Comments of the Montana Broadcasters Association at 3 (on behalf of KTVQ-TV, Billings, MT; KULR-TV, Billings, MT; KSVI-TV, Billings, MT; KHMT-TV, Hardin, MT; KTVM-TV, Butte, MT; KXLF-TV, Butte, MT; KXGN-TV, Glendive, MT; KUSM-TV, Bozeman, MT; KYUS-TV, Miles City, MT; and KJWY-TV, Jackson WY), Comments of Sunbelt Communications at 2 (on behalf of KPVI-TV, Pocatello, ID and KJWY-TV, Jackson, WY).

¹¹ Corban filed an *ex parte* in response to an inquiry by the Bureau. See Letter from Rodney Joyce, Counsel for Corban, to Ms. Marlene Dortch, Secretary, FCC (Sept. 24, 2002).

¹² 47 U.S.C. § 214(a).

¹³ See 47 U.S.C. § 201.

¹⁴ *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor (Competitive Carrier First Report and Order)*, 85 FCC 2d 1, 49 (1980).

¹⁵ See 47 C.F.R. § 63.71(a); see, e.g., *AT&T Application to Discontinue Interstate Sent-Paid Coin Service Not Automatically Granted*, Public Notice, NSD File No. W-P-D-497 (Aug. 3, 2001) (requiring AT&T to show how it will minimize the negative impact on the affected customers).

effect of the discontinuance on public safety in a number of communities could be devastating. These effects are in addition to the impact discontinuance would have on the FAA. All of the commenters argue that an October 19, 2002 deadline gives them insufficient time to acquire new microwave transmission facilities. Further, some commenters have made the uncontested allegation that severe winter weather conditions where the towers are located precludes the installation of new service until sometime during the summer of 2003.¹⁶ We believe that it is consistent with our public policy obligations to give the commenters the opportunity to secure an alternative to the microwave transmission service they currently obtain from Corban.

8. The Commission has considerable discretion in making a finding under section 214.¹⁷ We exercise that discretion today in a manner intended to minimize burdens on Corban, yet protect its customers from service disruptions. Accordingly, Corban's application is granted to the extent that, under section 214 and the Commission's rules, Corban may discontinue service on October 19, 2002, to customers other than those that have commented in this proceeding. With regard to Corban's application to discontinue service to its customers that have filed comments in this proceeding (a list of which is attached as an appendix to this order), we find that, based on the record we have received so far, these customers have not been able to obtain any type of substitute service, and also that the public interest would be adversely affected by discontinuance of the services in question. Therefore, we order Corban to continue providing service for one hundred twenty (120) days from the date of release of this order to allow us to further develop the record as to the availability of alternatives for these customers. This additional period of time shall be subject to further extension if customers have not been able to obtain service or a reasonable substitute from another carrier, or if the public convenience and necessity is otherwise adversely affected by discontinuance. Finally, we note that nothing in this Order relieves Corban from any obligations that it may have under relevant state law or regulation regarding the discontinuation of service to its customers.

¹⁶ See, e.g., Comments of the Montana Broadcasters Association at 3 and KTVQ Communications, Inc.

¹⁷ *FCC v. RCA Communications, Inc.*, 73 S.Ct. 998, 1002 (1953).

ORDERING CLAUSE

9. Accordingly, pursuant to sections 1, 4(1), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(1), 214, and sections 0.91, 0.291, and 63.71 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 63.71, IT IS ORDERED that the application of Corban Communications, Inc. to discontinue domestic telecommunications IS GRANTED IN PART AND DENIED IN PART, consistent with the discussion and conclusions in this order.

FEDERAL COMMUNICATIONS COMMISSION

William F. Maher, Jr.
Bureau Chief
Wireline Competition Bureau

Appendix – List of Affected Customers

KUSM Montana PBS
KTVQ-TV, Billings, MT
KULR-TV, Billings, MT
KSVI-TV, Billings, MT
KHMT-TV, Hardin, MT
KTVM-TV, Butte, MT
KXLF-TV, Butte, MT
KXGN-TV, Glendive, MT
KUSM-TV, Bozeman, MT
KYUS-TV, Miles City, MT
Millennium Digital Media
Pacific Microwave Joint Ventures (on behalf of KPVI-TV, Pocatello, ID and KJWY-TV,
Jackson, WY)
Verizon Wireless
MCI WorldCom Network Services, Inc. (only those services between Rapid City, South Dakota
/Denver, Colorado and Sergeant Bluff, Iowa/Denver)